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[*French v. Texas Utilities*](#), 92-ERA-36 (ALJ July 24, 1992)
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U.S. Department of Labor
Office of Administrative Law Judges
2600 Mt. Ephraim Avenue
Camden, New Jersey 08104

DATE: JULY 24, 1992
CASE NO. 92-ERA-36

IN THE MATTER OF

DARRELL W. FRENCH

COMPLAINANT

v.

TEXAS UTILITIES
and
BROWN & ROOT, INC.

RESPONDENTS

Darrell W. French

Pro se

David C. Lonergan, Esquire and W. Stephen Dockerham, Esquire

For Respondent Texas Utilities

Don Munderstma, Esquire

For Respondent Brown & Root, Inc.

Paul H. Teitler
Administrative Law Judge

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT

This is a proceeding under the Energy Reorganization Act of 1974, as amended ("ERA"), 42 U.S.C. §5801, *et seq.*, and its implementing regulations, 29 C.F.R. Part 24.

[Page 2]

A complaint of discriminatory employment practices was filed by Darrell W. French, on April 22, 1992 against his Employer, Brown and Root, Incorporated, and Texas Utilities of the Comanche Peak Steam Electric Station, (CPSES), Comanche Peak Nuclear Power Plant, Glen Rose, Texas.

The case was scheduled for trial on Thursday July 9, 1992, in Fort Worth, Texas. After exploration of the issues, and two lengthy settlement conferences, the parties have agreed to a settlement. Detailed Settlement Agreements and Releases of all Claims have been executed by the Claimant, Darrell W. French, by Donn C. Meindersma, Esquire, counsel for Brown & Root, Inc., and by David C. Lonergan, Esquire, counsel for Texas Utilities and witnessed by Owen L. Thero. Counsels for Brown & Root, Inc., and Texas Utilities, in open court, on the record, on July 10, 1992, released the Claimant from all claims on behalf of their clients, Brown & Root, Inc. and Texas Utilities.

The record contained the following additional exhibits. A letter from Richard P. Medford, Project Manager, Brown & Root, Inc., Exhibit BR-1, agreeing that Claimant Darrell W. French will be provided a neutral reference, and is eligible to submit an application for re-employment with Brown & Root, Inc., a Statement of Darrell W. French's Employment, including dates of employment and duties performed, Exhibit BR-4. A letter from William J. Cahill, Jr., Group Vice President of Texas Utilities agreeing to allow Mr. French future employment at Comanche Peak Steam Electric Station. Exhibit TU-1.

A Settlement Agreement with Brown & Root, Inc., Exhibit BR-2, Release of Brown & Root, Inc., Exhibit BR-3, a Settlement Agreement with Texas Utilities, Exhibit TU-2, and Release of Texas Utilities, Exhibit TU-3, dated July 10, 1992, have been presented to the undersigned.

The parties have requested that the Settlement Agreement be recommended to the Secretary of Labor for her approval. The detailed Settlement Agreements are set forth below, and are listed as Exhibits BR-2 and TU-2:

EXHIBIT BR-2

This Agreement is made by and between Mr. Darrell French and Brown & Root, Inc. ("Brown & Root") (collectively, "the parties").

Whereas Mr. Darrell French has asserted certain claims against Brown & Root arising out of his employment at the Comanche Peak Steam Electric Station, pursuant to Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851;

Whereas, Brown & Root has admitted no violation of any federal, state or

[Page 3]

local law or ordinance or any enforceable right of Mr. French and denies that Mr. French is entitled to any relief, but wishes to avoid the cost and expense in connection with further proceeding and litigation;

Whereas, the dispute between Mr. French and Brown & Root has been amicably resolved and Mr. French now desires to withdraw his complaint against Brown & Root, without admission of liability by it, any related companies, successors, assigns, officers, directors, managers, agents and employees. Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. This agreement does not constitute, and shall not be construed as, an admission of any liability or wrongdoing on the part of Brown & Root or any of its related companies, officers, directors, employees, agents, attorneys, or assigns.

2. Mr. French hereby releases Brown & Root and its related or affiliated companies, officers, directors, employees, agents, attorneys and assigns from liability as provided in the attached Release.

3. Brown & Root hereby provides to Mr. French a copy of the letter of reference in the form attached hereto. Further, in response to any inquiries regarding Mr. French's employment by Brown & Root, Brown & Root will provide the dates of his employment, the positions held, and if asked, will specify that Mr. French is eligible for rehire.

4. Mr. French understands that this agreement does not restrict him from filing any application for employment with Brown & Root and that he is eligible to file such an application. Mr. French further understands, however, that Brown & Root currently is in the process of reducing its work force at the Comanche Peak Steam Electric Station, and that this Agreement provides no guarantee that Mr. French will obtain re-employment with Brown & Root.

5. The parties agree that this Agreement is a fair, adequate, and reasonable compromise of the dispute between them. Mr. French agrees that in open court before Administrative Law Judge Paul H. Teitler he will request that his complaint in this matter be dismissed with prejudice.

6. Mr. French acknowledges that this settlement does not, in any way, serve as a mechanism to entice him to abandon pursuit to any safety concerns he may have about Comanche Peak Steam Electric Station, and acknowledges that he is expected to full and completely disclose any safety concerns he has to TU Electric's representatives, and to participate and cooperate in the resolution of those concerns. Mr. French further acknowledges that he retains all of his rights to raise and pursue any safety-related

concerns about Comanche Peak Steam Electric Station with the Nuclear Regulatory Commission or any other state or federal

[Page 4]

agency; provided, however, that he shall in no event have any private right of recovery or personal claim against any party hereto based upon any dissatisfaction with the resolution of such concerns.

7. This Agreement shall be binding upon and inure to the benefit of the parties, their respective agents, representatives, attorneys, successors and assigns and, as to Mr. French, his heirs, executors, administrators, and personal representatives.

The foregoing provides the entire Agreement between the parties and this Agreement cannot be modified except by written stipulation signed by the parties. Should any provision of this Agreement be held or rendered invalid by any ruling or legislative act, such invalidity shall have no effect on the remaining provisions, which shall remain in full force and effect.

EXHIBIT TU-2

Whereas, Darrell French ("French"), has asserted certain claims against Texas Utilities Electric Company ("TU Electric") arising out of his employment with Brown & Root, Inc. at the Comanche Peak Steam Electric Station ("CPSES") pursuant to the Employee Protection Provision of the Energy Reorganization Act, 42 U.S.C §5851;

Whereas, TU Electric has admitted no violation of any federal, state or local law or ordinance or any enforceable right of French and denies that French is entitled to any relief, but wishes to avoid the cost and expense in connection with further proceeding and litigation; and

Whereas, the dispute between French and TU Electric has been amicably resolved and French now desires to withdraw his complaint against TU Electric, without admission of liability by it, any related companies, successors, assigns, officers, directors, managers, agents and employees of the aforementioned companies, organizations and programs.

Now, therefore, in consideration of the mutual promises contained herein, French and TU Electric agree as follows:

1. This Settlement Agreement does not constitute, and shall not be construed as an admission of liability or wrongdoing on the part of TU Electric, or related parties, companies, successors, assigns, officers, directors, managers, agents and employees. Moreover, this Settlement Agreement does not amount to, and shall not be construed as an admission by French concerning the merits of this action.

2. French shall execute the attached release of TU Electric on any and all liability arising out of or relating to French's employment at CPSES.

[Page 5]

3. TU Electric represents and agrees that if French applies for and is hired to work at CPSES by any employer performing work at that site, TU Electric will take no actions to prevent French from obtaining site access to work for such employer for any reason arising out of his previous employment with Brown & Root, Inc.

4. French acknowledges that this settlement does not, in any way, serve as a mechanism to entice him to abandon pursuit of any safety concerns he may have about CPSES, and acknowledges that he is expected to fully and completely disclose any safety concerns he has to TU Electric's representatives, and to participate and cooperate in the resolution of those concerns. French further acknowledges that he retains all of his rights to raise and pursue any safety-related concerns about CPSES with the Nuclear Regulatory Commission or any other state or federal agency; provided, however, that he shall in no event have any private right to recovery or personal claim against any party hereto based upon any dissatisfaction with the resolution of such concerns.

5. French Agrees that in open court before Administrative Law Judge Paul H. Teitler he will request that his Complaint in this matter be dismissed with prejudice.

This Agreement shall be binding upon and inure to the benefit of the parties, their respective agents, representatives, attorneys, successors and assigns, and as to French, his heirs, executors, administrators and personal representatives.

The foregoing provides the entire Agreement between the parties and this Agreement cannot be modified except by written stipulation signed by each of the parties hereto.

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, as well as the criteria set forth in 42 U.S.C. §5851 and its implementing Regulations at 29 C. F. R. 24, *et seq.* and, upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the Claimant. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the difficult legal and factual questions involved.

Pursuant to, 42 U.S.C. §5851 of the Energy Reorganization Act, as amended, I **"RECOMMEND"** that the Secretary of Labor Approve the settlement.

PAUL H. TEITLER
Administrative Law Judge

PHT:abr